82-4-401. Short title. This part shall be known and may be cited as "The Opencut Mining Act".

History: En. Sec. 1, Ch. 326, L. 1973; R.C.M. 1947, 50-1501.

82-4-402. Intent, findings, and policy. (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Opencut Mining Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) Because the extraction and use of opencut materials is important to the economy of this state, it is the policy of this state to provide for the reclamation and conservation of land subjected to opencut materials mining. Therefore, it is the purpose of this part:

(a) to preserve natural resources;

(b) to aid in the protection of wildlife and aquatic resources;

(c) to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or that may be affected by opencut materials mining;

(d) to protect and perpetuate the taxable value of property through reclamation;

(e) to protect scenic, scientific, historic, or other unique areas; and

(f) to promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 326, L. 1973; amd. Sec. 2, Ch. 209, L. 1974; amd. Sec. 2, Ch. 235, L. 1974; R.C.M. 1947, 50-1502; amd. Sec. 1, Ch. 280, L. 1987; amd. Sec. 8, Ch. 507, L. 1999; amd. Sec. 1, Ch. 325, L. 2001; amd. Sec. 33, Ch. 361, L. 2003.

82-4-403. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land and land covered by water that is disturbed by opencut mining operations, including the area from which overburden or material is to be or has been removed and upon which the overburden is to be or has been deposited, roads constructed to gain access to the material, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, and material stockpile areas on or contiguous to the opencut mine.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Final cut" means the last pit created in an opencut-mined area.

(5) "Landowner" means the owner of land subjected to an opencut-mining operation.

(6) "Materials" means bentonite, clay, scoria, peat, sand, soil materials, or gravel.

(7) "Opencut mining" means the mining of materials by:

(a) removing the overburden lying upon natural deposits of materials and mining directly from the exposed natural deposits; or

(b) mining directly from natural deposits of materials.

(8) "Operator" means a person engaged in or controlling an opencut-mining operation.

(9) "Overburden" means all of the earth and other materials that lie above a natural deposit of materials.

(10) "Person" means:

(a) a natural person;

(b) a firm, association, partnership, cooperative, or corporation;

(c) a department, agency, or instrumentality of the state or any governmental subdivision; or

(d) any other entity.

(11) "Processing facilities" means all crushers, screens, and asphalt or concrete plants.

(12) "Progress report" means a report on a form provided by the department, with appropriate maps, that shows:

(a) any change in ownership or control of the affected land and includes a landowner consent form if a change has occurred;

(b) any change in personnel who are in charge of the operation or responsible for reclamation;

(c) any change in any contractors or subcontractors who will be working at the site; and

(d) all land that has been affected by the operation.

(13) "Reclamation" means the reconditioning of the area of land affected by opencut-mining operations to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential and industrial sites.

(14) "Reclamation plan" means a plan that:

(a) meets the requirements of 82-4-434; and

(b) contains a description of current land use, topographical data, water data, soils data, leased areas, and intended mine areas and an explanation of proposed reclamation of the land, including appropriate maps.

(15) "Refuse" means all waste material directly connected with the opencut-mining operations.

(16) "Soil materials" are those horizons that contain topsoil or other soils leached free of deleterious salts, that are capable of sustaining plant growth, and that are recognized as such by standard authorities.

(17) "Spoil" means the overburden that is disturbed from its natural state in the process of opencut mining.

History: En. Sec. 4, Ch. 326, L. 1973; amd. Sec. 4, Ch. 209, L. 1974; amd. Sec. 4, Ch. 235, L. 1974; amd. Sec. 17, Ch. 39, L. 1977; R.C.M. 1947, 50-1504; amd. Sec. 2, Ch. 280, L. 1987; amd. Sec. 402, Ch. 418, L. 1995; amd. Sec. 9, Ch. 507, L. 1999.

82-4-404. Exemption -- operations covered by metal mine reclamation. Nothing in this part may be construed to be applicable to mining or exploration operations which are regulated under the provisions of part 3 of this chapter.

History: En. Sec. 18, Ch. 326, L. 1973; amd. Sec. 29, Ch. 39, L. 1977; R.C.M. 1947, 50-1516.

82-4-405. Inapplicability to government. The provisions of this part relating to fees or bonds do not apply to the federal government or its agencies, the state of Montana, counties, cities, or towns.

History: En. 50-1516.1 by Sec. 1, Ch. 81, L. 1975; amd. Sec. 30, Ch. 39, L. 1977; R.C.M. 1947, 50-1516.1; amd. Sec. 10, Ch. 507, L. 1999.

82-4-406. Exemption -- operations on federal lands. This part is not applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency

administering the land impose controls for reclamation of those lands equal to or greater than those imposed by this part.

History: En. 50-1517 by Sec. 1, Ch. 219, L. 1975; amd. Sec. 31, Ch. 39, L. 1977; R.C.M. 1947, 50-1517.

82-4-407 through 82-4-420 reserved.

82-4-421. Administration -- delegation of functions. The department is the administrator of this part, and it has all the power necessary to implement and enforce it.

History: En. Sec. 5, Ch. 326, L. 1973; amd. Sec. 18, Ch. 39, L. 1977; R.C.M. 1947, 50-1505; amd. Sec. 403, Ch. 418, L. 1995.

82-4-422. Powers, duties, and functions. (1) The department has the powers, duties, and functions to:

(a) issue permits when it is found on the basis of the information set forth in the application and an evaluation of the operation by the department that the requirements of this part and rules adopted to implement this part will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of this part;

(b) amend permits in accordance with the provisions of 82-4-436;

(c) reclaim any affected land with respect to which a bond has been forfeited; and

(d) make investigations or inspections that are considered necessary to ensure compliance with any provision of this part.

(2) The board shall:

(a) adopt rules that pertain to opencut mining in order to accomplish the purposes of this part;

(b) adopt rules establishing uniform procedures for filing of necessary records, for the issuance of permits, and for any other matters of administration not specifically enumerated in this part; and

(c) conduct hearings and, for the purposes of conducting those hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry.

History: En. Sec. 6, Ch. 326, L. 1973; amd. Sec. 19, Ch. 39, L. 1977; R.C.M. 1947, 50-1506; amd. Sec. 404, Ch. 418, L. 1995; amd. Sec. 11, Ch. 507, L. 1999; amd. Sec. 15, Ch. 79, L. 2001; amd. Sec. 2, Ch. 325, L. 2001.

82-4-423. Permits for reclamation. The department is authorized to issue permits to operators in the name of the state of Montana that will provide for the reclamation of lands on which opencut mining of minerals has been or is to be conducted. The department is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any permit, and the department shall bring any court actions and take any other steps and actions as may be necessary to enforce the provisions of a permit.

History: En. Sec. 3, Ch. 326, L. 1973; amd. Sec. 3, Ch. 209, L. 1974; amd. Sec. 3, Ch. 235, L. 1974; amd. Sec. 16, Ch. 39, L. 1977; R.C.M. 1947, 50-1503; amd. Sec. 3, Ch. 280, L. 1987; amd. Sec. 405, Ch. 418, L. 1995; amd. Sec. 12, Ch. 507, L. 1999.

82-4-424. Receipt and expenditure of funds -- disposition of fees, fines, penalties, and other money. (1) The department may receive any federal funds, state funds, or any other funds for the reclamation of land affected by opencut mining. The department may cause the

reclamation work to be done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons.

(2) All fees, fines, penalties, and other money paid under the provisions of this part must be deposited in the environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the environmental rehabilitation and response account in the state special revenue fund.

History: En. Sec. 11, Ch. 326, L. 1973; amd. Sec. 24, Ch. 39, L. 1977; R.C.M. 1947, 50-1511; amd. Sec. 1, Ch. 431, L. 1991; amd. Sec. 406, Ch. 418, L. 1995; amd. Sec. 5, Ch. 338, L. 2001.

82-4-425. Inspection of opencut mining. The department or its accredited representatives may enter upon lands subjected to opencut mining at all reasonable times for the purpose of inspection to determine whether the provisions of this part have been complied with.

History: En. Sec. 12, Ch. 326, L. 1973; amd. Sec. 25, Ch. 39, L. 1977; R.C.M. 1947, 50-1512; amd. Sec. 407, Ch. 418, L. 1995.

82-4-426. Reclamation of land on which bond forfeited. In keeping with the provisions of this part, the department may reclaim any affected lands with respect to which a bond has been forfeited. If the amount of the forfeited bond exceeds the cost of reclamation, the excess must be deposited in the environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110.

History: En. Sec. 14, Ch. 326, L. 1973; amd. Sec. 27, Ch. 39, L. 1977; R.C.M. 1947, 50-1514; amd. Sec. 408, Ch. 418, L. 1995; amd. Sec. 72, Ch. 509, L. 1995; amd. Sec. 6, Ch. 338, L. 2001.

82-4-427. Hearing -- appeal -- venue. (1) A person who is aggrieved by a final decision of the department under this part is entitled to a hearing before the board, if a written request is submitted to the board within 30 days of the department's decision.

(2) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

(3) An action to challenge the issuance of a permit pursuant to this section must be brought in the county in which the permitted activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(4) A judicial challenge to a permit issued pursuant to this part by a party other than the permitholder or applicant must include the party to whom the permit was issued unless otherwise agreed to by the permitholder or applicant. All judicial challenges of permits for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

History: En. Sec. 15, Ch. 326, L. 1973; amd. Sec. 28, Ch. 39, L. 1977; R.C.M. 1947, 50-1515; amd. Sec. 409, Ch. 418, L. 1995; amd. Sec. 13, Ch. 507, L. 1999; amd. Sec. 16, Ch. 79, L. 2001; amd. Sec. 34, Ch. 361, L. 2003; amd. Sec. 17, Ch. 337, L. 2005.

82-4-428 through 82-4-430 reserved.

82-4-431. Permit for reclamation required. (1) An operator may not conduct opencut-mining operations that result in the removal of a total of 10,000 cubic yards or more of materials and overburden until the department has issued a permit to the operator for the reclamation of the land affected. A person may not, without a permit, remove materials from a site from which a total of 10,000 cubic yards or more of materials and overburden has been removed. An operator conducting a number of operations, each of which results in the removal of less than 10,000 cubic yards of materials and overburden but that result in the removal of 10,000 cubic yards or more of materials and overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.

(2) Except as provided in or conditioned under subsections (3) and (4), an operator who holds a permit for reclamation may operate an opencut mine without first securing an additional permit or an amendment to the existing permit or bond if the mine meets the following criteria:

(a) the total amount of materials and overburden removed does not exceed 2,500 cubic yards; and

(b) the operator notifies the department prior to beginning operations and, within 30 days of notifying the department, submits a completed site information form, salvages and stockpiles all root-bearing soil materials, regrades the affected area to 3:1 or flatter slope and blends the reclaimed area into the adjacent topography, and during the first appropriate growing season, replaces all topsoil and reseeds or revegetates as required by the department.

(3) The department may refuse to approve an application for issuance of a permit under subsection (1) or allow the operator to operate an opencut mine under subsections (1) and (2) if, at the time of notification by the operator to the department, the operator has a pattern of violations or is in current violation of this part, rules adopted under this part, or provisions of a permit for reclamation.

(4) The department may require an additional bond as a condition for the operation of an opencut mine under subsection (2).

(5) Opencut mines described in subsection (2) may not be placed:

(a) in flowing, ephemeral, or intermittent streams;

(b) in the bottom or head of a confined drainage;

(c) in an area where the operation will intercept ground water or intercept any slope that is naturally steeper than 3:1; or

(d) in any area where mining would be restricted by other laws.

(6) Sand and gravel opencut mines must meet applicable local zoning regulations adopted under Title 76, chapter 2.

History: En. Sec. 7, Ch. 326, L. 1973; amd. Sec. 20, Ch. 39, L. 1977; R.C.M. 1947, 50-1507; amd. Sec. 4, Ch. 280, L. 1987; amd. Sec. 3, Ch. 408, L. 1991; amd. Sec. 2, Ch. 431, L. 1991; amd. Sec. 410, Ch. 418, L. 1995; amd. Sec. 14, Ch. 507, L. 1999.

82-4-432. Application for permit -- contents -- issuance -- amendment. (1) Applications for a permit must be made upon a form furnished by the department. The form must contain the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the volume of earth to be removed, as accurately as the volume may then be estimated, and the volume that has been previously removed, if any;

(d) the location of the operation by legal subdivision, section, township and range, and county;

(e) the date when the operation was or will be commenced; and

(f) a statement that the applicant has the right and power, by legal estate owned, to mine, by opencut mining, the lands described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a fee of $50 for an application to mine bentonite, clay, scoria, sand, or gravel;

(c) a statement from the local governing body having jurisdiction over the area to be mined certifying that a proposed sand and gravel opencut mine and its operating and reclamation plans comply with applicable local zoning regulations adopted under Title 76, chapter 2; and

(d) the operator's plan of operation and a complete reclamation plan.

(3) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests the department to examine the area to be mined, the department shall cause the area to be examined and make recommendations to the person regarding reclamation. The person may request a meeting with the department. The department shall hold a meeting if requested.

(4) Except as provided in 75-1-208(4)(b), upon receipt of an application containing all items listed in subsections (1) and (2), the department shall, within 15 days, notify the person whether or not the department believes that the application is complete. If the department determines that the application is not complete, the department shall include in the notification a detailed identification of all deficiencies. Within 30 days of receipt of a complete application, the department shall notify the applicant if it has approved or denied the application. If the department denies the application, the notice must include a detailed explanation describing why the application was denied. The department may for sufficient cause extend its period of review for an additional 30 days if it notifies the person of the extension prior to the end of the original 30-day period. The department shall include in the notification of extension the reason for the extension. Upon approval of the application, the department shall issue a permit to the operator that entitles the operator to continue or engage in opencut mining on the land described in the application.

(5) An operator desiring to have a permit amended to cover additional contiguous or nearby land may file an amended application with the department. Upon receipt of the amended application and any additional bond that may be required and upon agreement to the terms of the amendment by the parties, the department may issue an amendment to the original permit covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by a permit, except affected land, by notifying the department of the withdrawal, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part must be reduced proportionately.

History: En. Sec. 8, Ch. 326, L. 1973; amd. Sec. 21, Ch. 39, L. 1977; R.C.M. 1947, 50-1508; amd. Sec. 4, Ch. 408, L. 1991; amd. Sec. 411, Ch. 418, L. 1995; amd. Sec. 15, Ch. 507, L. 1999; amd. Sec. 13, Ch. 299, L. 2001; amd. Sec. 3, Ch. 325, L. 2001.

82-4-433. Bond. (1) A bond required to be filed under this part by the operator must be in a form that the department prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part, the rules of the board, and the permit. The bond must be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana, as

surety. The bond must be in an amount not to exceed the costs of restoration required by this part as determined by the department. The amount of the bond may not be less than $200 or more than $1,000 an acre unless the department determines, in writing, that the cost of restoration of the land exceeds $1,000 an acre. Upon the cost determination, the bond amount must be set by the department at the cost of restoring the land.

(2) (a) For opencut-mining operations on federal land within the state, the department may accept a bond payable to the state of Montana and the federal agency administering the land. The bond must provide at least the same amount of financial guarantee as required by this part.

(b) The bond must provide that the department may forfeit the bond without the concurrence of the federal land management agency. The bond may provide that the federal land management agency may forfeit the bond without the concurrence of the department. Upon forfeiture by either agency, the bond must be payable to the department and may also be payable to the federal land management agency. If the bond is payable to the department and the federal land management agency, the department, before accepting the bond, shall enter into an agreement or memorandum of understanding with the federal land management agency providing for administration of the bond funds in a manner that will allow the department to provide for compliance with the requirements of this part, the rules adopted under this part, and the permit.

(3) In lieu of the bond, the operator may deposit with the department cash, government securities, a letter of credit in a form acceptable to the department, or a bond with property sureties in an amount equal to that of the required bond on conditions as prescribed in this part. In the discretion of the department, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities located on the land as security, in which event a surety may not be required but the department may require that the amount of the bond be adjusted to reimburse the department for foreclosure costs. The penalty of the bond or amount of cash and securities must be increased or reduced from time to time as provided in this part. The bond or security remains in effect until the affected land has been reclaimed as provided under the permit and the reclamation has been approved and the bond or security has been released by the department. The bond or security may cover only actual affected land and may be increased or reduced to cover only those acreages as remain unreclaimed.

(4) If the license of a surety upon a bond filed with the department pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice of the suspension or revocation from the department, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the department may suspend the permit of the operator to conduct operations upon the land described in the permit until the substitution has been made.

(5) The department shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

(6) Whenever an operator has completed all of the requirements under the provisions of this part as to any affected land, the operator shall notify the department of the completed requirements. If the board releases the operator from further obligation regarding any affected land, the penalty of the bond must be reduced proportionately.

History: En. Sec. 9, Ch. 326, L. 1973; amd. Sec. 22, Ch. 39, L. 1977; R.C.M. 1947, 50-1509; amd. Sec. 1, Ch. 138, L. 1983; amd. Sec. 5, Ch. 280, L. 1987; amd. Sec. 3, Ch. 431, L. 1991; amd. Sec. 412, Ch. 418, L. 1995; amd. Sec. 16, Ch. 507, L. 1999; amd. Sec. 2, Ch. 32, L. 2005.

82-4-434. Reclamation plan part of permit -- requirements. The reclamation plan must meet the following requirements:

(1) The department shall submit each reclamation plan or operator-proposed amendments to

the reclamation plan to the landowner for recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or operator-proposed amendments. The department may seek technical help from any state or federal agency. The department shall submit the plan immediately to the state historic preservation office for evaluation of possible archaeological or historical values in the area to be mined. The department may approve a reclamation plan only if the department has found that the plan provides for the best possible reclamation under the circumstances at the time, so that after mining operations are completed, the affected land will be reclaimed to a productive use. Once the reclamation plan is accepted, in writing, by the department, the plan must become a part of the permit but is subject to annual review and modification by the department. Any modification by the department must comply with the provisions of 82-4-436(2).

(2) The department may not approve a reclamation plan or a plan of operations unless the plans provide:

(a) that the land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, habitat for wildlife, including food, cover, or water, or other uses;

(b) that to the extent reasonable and practicable, the operator will establish vegetative cover commensurate with the proposed land use;

(c) whenever operations result in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of the impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) that to accomplish practical utilization of soil materials, the material will be salvaged and utilized for placement on affected areas, if required by the reclamation plan after completion or termination of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less. The depth of soil materials to be placed on the reclaimed area must be specified in the plan.

(e) that grading will be commensurate with the topography sought and land use designated;

(f) that metal and other waste will be removed or buried;

(g) that all access, haul, and other support roads will be located, constructed, and maintained in such a manner as to control and minimize channeling and other erosion;

(h) that the operator will submit a progress report annually to the department;

(i) that all operations will be conducted to avoid range and forest fires and spontaneous combustion and that open burning of carbonaceous materials will be in accordance with suitable practices for fire prevention and control;

(j) that archaeological and historical values in areas to be mined will be given appropriate protection;

(k) that except for those postmine land uses that do not require vegetation, each surface area of the mined premises that will be disturbed will be revegetated when its use for extractive purposes is no longer required;

(l) that seeding and planting will be done in a manner to achieve a permanent vegetative cover that is suitable for the postmine land use and that retards erosion and that all seed will be drilled unless otherwise provided in the plan;

(m) that reclamation will be as concurrent with mining operations as feasible and will be completed within a specified length of time;

(n) that surface water and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the operation;

(o) that noise and visual impacts on residential areas will be minimized to the degree

practicable through berms, vegetation screens, and reasonable limits on hours of operation; and

(p) that any additional procedures that are necessary, consistent with the purposes of this part, to prevent significant physical harm to the affected land or adjacent land, structures, improvements, or life forms will be implemented.

(3) If reclamation according to the plan has not been completed in the time specified, the department, after 30 days' written notice, shall order the operator to cease mining and, if the operator does not cease, may issue an order to reclaim, a notice of violation, or an order of abatement or may institute an action to enjoin further operation and may sue for damages for breach of the conditions of the permit, for payment of the performance bond, or for both.

(4) (a) At any time during the term of the permit, the operator may for good reason submit to the department a new reclamation plan or amendments to the existing plan, including extensions of time.

(b) The department may approve the proposed new reclamation plan or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan; or

(ii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the permit.

(5) The operator shall provide a performance bond or an alternative acceptable to the department in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than $200 an acre. The estimated cost of reclamation must be set forth in the reclamation plan.

(6) The permit, reclamation plan, and amendments accepted by the department are a public record and are open to inspection.

(7) The permit is effective when signed by the department and the operator and remains in force until terminated by mutual consent or by the department upon 6 months' notice.

History: En. Sec. 10, Ch. 326, L. 1973; amd. Sec. 23, Ch. 39, L. 1977; R.C.M. 1947, 50-1510; amd. Sec. 6, Ch. 280, L. 1987; amd. Sec. 58, Ch. 16, L. 1991; amd. Sec. 413, Ch. 418, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 17, Ch. 507, L. 1999; amd. Sec. 4, Ch. 325, L. 2001.

82-4-435. Repealed. Sec. 2, Ch. 113, L. 1981.

History: En. Sec. 13, Ch. 326, L. 1973; amd. Sec. 26, Ch. 39, L. 1977; R.C.M. 1947, 50-1513.

82-4-436. Plan amendments -- venue. (1) Unless an amendment to a plan of operation, reclamation plan, or other permit is proposed by the operator, the department may modify only the terms of a plan or permit in compliance with this section.

(2) If the department believes, based on credible evidence, that continued operation under the terms of an existing plan or permit would violate a substantive numerical or narrative state standard or regulation or otherwise violate a purpose of this part, it may propose to the operator an amendment to the plan or permit.

(3) The department shall notify the operator of the proposed amendment in writing. The notice must include:

(a) an identification of the existing plan or permit;

(b) the justification for the amendment, including all test results or other credible evidence

that the department relied on in proposing the amendment; and

(c) the text of the proposed amendment.

(4) The operator may, within 15 days of receipt of the department's amendment notice, request a review of the amendment by the department director. The amendment is not effective or enforceable until 15 days following the issuance of the department's amendment notice or until after the department director affirms or modifies the amendment if a review by the director is requested. A decision by the department director is subject to the contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, parts 6 and 7.

(5) If the operator does not appeal the proposed amendment, the amendment becomes effective and enforceable 15 days after the operator receives the notification.

(6) An action to challenge the issuance of an amendment pursuant to this section must be brought in the county in which the activity is proposed to occur. If an activity is proposed to occur in more than one county, the action may be brought in any of the counties in which the activity is proposed to occur.

(7) A judicial challenge to an amendment issued pursuant to this section by a party other than the amendment holder or applicant must include the party to whom the amendment was issued unless otherwise agreed to by the amendment holder or applicant. All judicial challenges of amendments for projects with a project cost, as determined by the court, of more than $1 million must have precedence over any civil cause of a different nature pending in that court. If the court determines that the challenge was without merit or was for an improper purpose, such as to harass, to cause unnecessary delay, or to impose needless or increased cost in litigation, the court may award attorney fees and costs incurred in defending the action.

History: En. Sec. 5, Ch. 325, L. 2001; amd. Sec. 35, Ch. 361, L. 2003; amd. Sec. 18, Ch. 337, L. 2005.

82-4-437 through 82-4-440 reserved.

82-4-441. Administrative and judicial penalties -- enforcement. (1) When the department has reason to believe that a person is in violation of this part, a rule adopted or an order issued under this part, or a term or condition of a permit issued under this part, it shall send a violation letter to the person. The violation letter must describe the provision of the statute, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The letter must also recommend corrective actions that are necessary to return to compliance. Issuance of a violation letter under this subsection does not limit the authority of the department under this part to bring a judicial action for penalties or injunctive relief or to initiate an administrative enforcement action.

(2) By issuance of an order pursuant to subsection (5), the department may assess against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a reclamation permit:

(a) an administrative penalty of not less than $100 or more than $1,000 for the violation; and

(b) an additional administrative penalty of not less than $100 or more than $1,000 for each day during which a violation continues.

(3) The department may bring a judicial action seeking a penalty of not more than $5,000 against a person who violates any of the provisions of this part, rules adopted or orders issued under this part, or provisions of a permit and a penalty of not more than $5,000 for each day that the violation continues. In determining the amount of the penalty, the district court shall consider the factors in subsection (4).

(4) Penalties assessed under this section must be determined in accordance with the penalty

factors in 82-4-1001.

(5) (a) In addition to the violation letter sent pursuant to subsection (1), the department may also issue an order if it has credible information that a violation listed in subsection (2) has occurred. The order must specify the provision of the part, rule, order, or permit alleged to be violated and the facts alleged to constitute the violation. The order may require necessary corrective action within a reasonable period of time, may assess an administrative penalty determined in accordance with this section, or both. The order must be served personally or by certified mail.

(b) An order issued pursuant to subsection (5)(a) becomes final unless, within 30 days after the order is served, the person to whom the order is issued submits to the board a written request for a hearing stating the reason for the request. Service of an order by mail is complete 3 business days after mailing. If a request for a hearing is filed, a hearing must be held within a reasonable time under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6. After a hearing, the board shall affirm, modify, or rescind the order.

(6) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a permit issued pursuant to this part. Actions for injunctions or penalties must be filed in the district court of the county in which the opencut mine is located or, if mutually agreed on by both parties in the action, in the first judicial district, Lewis and Clark County.

(7) The provisions of this section do not limit the authority of the department to bring a judicial action for penalties or injunctive relief prior to or instead of initiating an administrative enforcement action under this part.

History: En. Sec. 1, Ch. 113, L. 1981; amd. Sec. 7, Ch. 280, L. 1987; amd. Sec. 4, Ch. 431, L. 1991; amd. Sec. 414, Ch. 418, L. 1995; amd. Sec. 2, Ch. 271, L. 1997; amd. Sec. 5, Ch. 273, L. 1997; amd. Sec. 18, Ch. 507, L. 1999; amd. Sec. 17, Ch. 79, L. 2001; amd. Sec. 6, Ch. 325, L. 2001; amd. Sec. 4, Ch. 486, L. 2005.

82-4-442 through 82-4-444 reserved.

82-4-445. Reclamation of abandoned mine sites. (1) Agents, employees, or contractors of the department may enter upon property for the purpose of conducting studies or exploratory work to determine whether the property has been mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration or reclamation of the property or abatement, control, or prevention of the adverse effects of past mining practices. The department may bring an injunctive action to restrain interference with the exercise of the right to enter and inspect granted in this subsection.

(2) (a) The department may enter upon property pursuant to subsection (2)(b) if it makes a finding that:

(i) land or water resources on the property have been adversely affected by past mining practices;

(ii) the adverse effects are at a stage that, in the public interest, action to restore or reclaim the property or to abate, control, or prevent the adverse effects should be taken; and

(iii) the owners of the land or water resources where entry must be made to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon the property to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices.

(b) If the department has made findings pursuant to subsection (2)(a), agents, employees, or

contractors of the department may enter upon property adversely affected by past mining practices and other property necessary for access to the adversely affected property to do all things necessary or expedient to restore or reclaim the property or to abate, control, or prevent the adverse effects of past mining practices after:

(i) giving notice by mail to the owner, if known, and a purchaser under contract for deed, if known; or

(ii) if neither is known, posting notice upon the property and advertising in a newspaper of general circulation in the county in which the property lies.

(c) Entry upon property pursuant to this section is not an act of condemnation of property or of trespass but rather an exercise of the power granted by Article IX, sections 1 and 2, of the Montana constitution.

(3) The board may acquire the necessary property by gift or purchase, or if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) acquisition of the property is necessary for successful reclamation;

(b) the acquired property after restoration or reclamation or after abatement, control, or prevention of the adverse effects of past mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

(c) (i) permanent facilities, such as treatment plants or relocated stream channels, will be constructed on the property for the restoration or reclamation of the property or for abatement, control, or prevention of the adverse effects of past mining practices; or

(ii) acquisition of refuse disposal sites and all refuse on the sites will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past mining practices.

(4) The department may record in the office of the clerk and recorder in the county in which property that has been reclaimed pursuant to 82-4-424 or this section is located a notice that the property has been mined and reclaimed. The notice must include the date and a brief description of the reclamation.

History: En. Sec. 2, Ch. 329, L. 1995.

82-4-446. Filing of lien for abandoned mine reclamation project. (1) Before commencement of a project using public funds to restore or reclaim property or to abate, control, or prevent adverse effects of past mining practices on private property, the department may file a notice of the right to claim a lien in the clerk and recorder's office in the county in which the majority of the property lies.

(2) If the department expends or allocates public funds conducting mine reclamation work under this part and if the department determines, based on an appraisal by an independent qualified appraiser chosen by the department, that the work has resulted or will result in a significant increase in the fair market value of property, the department may file a lien against the property reclaimed.

(3) Within 6 months after the completion of the project, the department shall itemize the funds expended and may file a lien statement. The lien statement must include:

(a) the value of the property before commencing the work of restoration or reclamation or abatement, control, or prevention of adverse effects of the past mining practices;

(b) the value of the property after the work has been completed;

(c) a listing of the appraisal upon which the values in subsections (3)(a) and (3)(b) are based and the location where those appraisals may be examined;

(d) the amount of public funds spent by the department on the project; and

(e) the amount of the lien.

(4) The amount of the lien must be the lesser of either the increase in the value of the property or the amount of public funds actually expended by the department.

(5) A lien may not be filed under this section against the property of a person who owned the surface rights prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this part.

(6) If a lien is filed, the department shall send, by certified mail to the owner's last-known address, copies of the lien, the statement of costs, and the appraisals to the owner of record of the property.

(7) The lien provided in this section is effective as of the date of expenditure of the public funds and has priority over all other liens or security interests that have attached to the property that is the subject of the lien, whenever those liens may have arisen, second only to real estate taxes imposed upon the property.

(8) Within 60 days after the department files the lien, the owner of the property to which the lien provided for in this section attaches may petition the district court for the county in which the majority of the property is located asking the district court to resolve disputes regarding the amount of actual funds spent by the department or to determine the increase in the market value of the property as a result of the restoration or reclamation or abatement, control, or prevention of the adverse effects of past mining practices. If it differs from the department's statement, the amount found by the court to be the lesser of the actual funds spent or the increase in market value is the amount of the lien and that amount must be recorded with the department's statement.

(9) A lien placed on property under this section may be satisfied by payment to the department of the amount of the lien. The department may accept partial payments on terms and conditions that the department specifies, but the lien is satisfied only to the extent of the value of the consideration received. A lien must be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Unsatisfied portions remain as a lien on the property. When a lien is partially or wholly satisfied, the department shall file with the clerk and recorder with whom the lien is filed an instrument releasing the lien in whole or in part.

(10) A lien placed on property under this section renews automatically, without a requirement on the part of the department to file a continuation notice, until the time that the lien is fully satisfied. Interest is payable on unsatisfied liens or portions of the liens provided for in this section, and it must be accumulated at the rate of 10% a year and may not be compounded.

(11) Funds derived from the satisfaction of liens established under this part must be deposited in the abandoned mine reclamation fund account from which the project was funded.

History: En. Sec. 3, Ch. 329, L. 1995.

82-4-1001. ***(Effective January 1, 2006)*** **Penalty factors.** (1) In determining the amount of an administrative or civil penalty assessed under the statutes listed in subsection (4), the department of environmental quality or the district court, as appropriate, shall take into account the following factors:

(a) the nature, extent, and gravity of the violation;

(b) the circumstances of the violation;

(c) the violator's prior history of any violation, which:

(i) must be a violation of a requirement under the authority of the same chapter and part as the violation for which the penalty is being assessed;

(ii) must be documented in an administrative order or a judicial order or judgment issued within 3 years prior to the date of the occurrence of the violation for which the penalty is being

assessed; and

(iii) may not, at the time that the penalty is being assessed, be undergoing or subject to administrative appeal or judicial review;

(d) the economic benefit or savings resulting from the violator's action;

(e) the violator's good faith and cooperation;

(f) the amounts voluntarily expended by the violator, beyond what is required by law or order, to address or mitigate the violation or impacts of the violation; and

(g) other matters that justice may require.

(2) Except for penalties assessed under 82-4-254, after the amount of a penalty is determined under (1), the department of environmental quality or the district court, as appropriate, may consider the violator's financial ability to pay the penalty and may institute a payment schedule or suspend all or a portion of the penalty.

(3) Except for penalties assessed under 82-4-254, the department of environmental quality may accept a supplemental environmental project as mitigation for a portion of the penalty. For purposes of this section, a "supplemental environmental project" is an environmentally beneficial project that a violator agrees to undertake in settlement of an enforcement action but which the violator is not otherwise legally required to perform.

(4) This section applies to penalties assessed by the department of environmental quality or the district court under 82-4-141, [82-4-254,] 82-4-361, and 82-4-441.

(5) The board of environmental review and the department of environmental quality may, for the statutes listed in subsection (4) for which each has rulemaking authority, adopt rules to implement this section. *(Bracketed language void on occurrence of contingency--sec. 30, Ch. 487, L. 2005.)*

History: En. Sec. 3, Ch. 487, L. 2005.

82-4-1002. *(Effective January 1, 2006)* Collection of penalties, fees, late fees, and interest. (1) If the department of environmental quality is unable to collect penalties, fees, late fees, or interest assessed pursuant to the provisions of this chapter, the department of environmental quality may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department of environmental quality, or assistance costs charged the department of environmental quality by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department of environmental quality and deposited in the general fund or the accounts specified in statute for the assessed penalties, fees, late fees, or interest, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

History: En. Sec. 4, Ch. 487, L. 2005.